



UPPER SEVEN LAW  
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April 18, 2025

Molly C. Dwyer, Clerk  
U.S. Court of Appeals for the Ninth Circuit  
95 Seventh Street  
San Francisco, CA 94103

**Re: Response to Rule 28(j) Letter in *Imperial Sovereign Court of the State of Montana v. Knudsen*, No. 23-3581 (oral argument held June 4, 2024)**

Dear Ms. Dwyer,

Plaintiffs respectfully respond to the State's Rule 28(j) letter filed April 17, 2024, which cites *Arizona Attorneys for Criminal Justice v. Mayes*, 127 F.4th 105 (9th Cir. 2025). *Mayes* involves the application of previously briefed legal standard to an immediately distinguishable statute and is therefore neither "significant" nor "pertinent." Fed. R. App. P. 28(j).

*Mayes* does not move the needle. It presents a straightforward application of the standard for a facial challenge set forth in *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024). But the parties addressed *Moody* in letters filed in July of last year. Dkt. 39, 49. And their principal briefs apply the standard set forth in *Moody*. Appellants' Op. Br. 23-29; Appellees' Resp. Br. 55-57.

If anything, *Mayes* supports Plaintiffs' facial challenge. The law at issue in *Mayes* prevents defense counsel from initiating direct contact with victims of crimes. 127 F.4th at 110. The plaintiffs did not challenge the statute's application to victim-interview requests, "the law's primary applications." *Id.* at 107; *see also id.* at 111 ("victim interviews are the core concern of the challenged law"). Rather, the plaintiffs "direct[ed] their challenge to the edges of" the law—limitations on "conversations" and "information-sharing." *Id.* at 111. The Court held only that "this facial challenge . . . , as framed, fails." *Id.* at 113.

In contrast, Plaintiffs squarely challenge the entirety of HB 359, which restricts both drag story hours and vaguely defined sexually oriented performances. If the plaintiffs in *Mayes* aimed at the edges of the law, Plaintiffs' challenge strikes at the heartland.

Sincerely,

/s/ Constance Van Kley  
Constance Van Kley  
*Counsel for Plaintiffs-Appellees*